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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,361

01/23/2004

Patrick P. Hussey

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04/27/2006

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EXAMINER

HANEY, RICHAE LEE

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/763,361	<b>Applicant(s)</b> HUSSEY, PATRICK P.	
	<b>Examiner</b> Richale L. Haney	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/1/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed 8/8/2005 has been received. Claims 1 –14 have been amended. Claims 1 –14 are pending.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 2, 5, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Desimone et al. (US 2,399,991). The device of Desimone et al. disclose goggles having an air venting system comprising: a goggle body (Fig. 1, 11), a lens (14) mounted in a lens aperture, an eye cavity, at least one intake aperture (Fig. 2, 12) communicating through said goggle body with said eye cavity; and at least one clip (Fig. 5, 16) said clip having a leading edge (Fig. 1 at 26), a trailing edge (adjacent 32), connected by a pair of side edges, an interior clip surface and an exterior clip surface; a clip aperture (Fig. 5,17) communicating through said clip between said interior surface and said exterior surface; means of attachment (27) of said clip to said sidewall; and said exterior surface of said clip between said clip aperture and said leading edge dimension to create a low air pressure area immediately adjacent to said clip aperture when moving air travels over said leading edge and means for attachment of strap to an

Art Unit: 3765

area at the trailing edge (Fig. 8, 16, 38) With regard to claims 13 and 14 it is noted that applicant recites "at least one clip is a member of a kit of clips". Claims 13 and 14 are both directed to a sport goggle. Recitation of a "kit of clips" does not further limit these claims, since only one clip is present on the goggle at any one time. Therefore, the clip structure of the goggle is defined by a single clip rather than by all the members of a kit of clips. The clip of Desimone is a member of a kit of clips since Desimone's clip may be removed and replaced with another clip.

#### ***Allowable Subject Matter***

3. Claims 3, 4, 6 –12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

4. Applicant's arguments filed 8/8/2005 have been fully considered but they are not persuasive.

Applicant submits that the prior art reference of Desimone et al. does not anticipate claims 1, 2, 13 and 14. Stating that the clip claimed and the clip of Desimone et al. are not analogous and that the device does not appear to be dimensioned to create a low pressure area immediately adjacent to the clip aperture when moving air travels over the leading edge. When interpreted in the broadest possible sense the device of Desimone et al. the clip (16) meets the limitations as claimed by the applicant.

Art Unit: 3765

Applicant's disclosure doesn't provide data to support what would be considered "dimensioned to create a low air pressure area." Since, the areas of the claimed invention and the prior art reference are substantially the same size, and the structure of the inventions meets the limitations claimed by the applicant, it can be assumed that the prior art reference would perform in the same manner as that claimed by the applicant.

In response to applicant's statement, "the goggles of Desimone et al. do not appear capable and are not described as being suitable for sports involving motion," it is noted by the examiner that this is a statement regarding the intended use of the invention. The invention of Desimone et al. is capable of being worn while participating in motion sports and therefore meets the limitations claimed.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3765

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
April 24, 2006

RLH

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700